

CHAPTER 303 CODE OF ETHICS

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303-1. Declaration of Policy. 1. It is declared that high moral and ethical standards among officials and other city employees are essential to the conduct of free government; that the common council believes that a code of ethics for the guidance of officials and other city employees will help them avoid conflicts between their personal interests and their public responsibilities, will improve standards of public service and will promote and strengthen the faith and confidence of the people of Milwaukee in their public officials and other city employees.

2. It is the intent of the common council that any elected city official, any person appointed to elective office, any candidate for city elective office, all heads of departments, all division superintendents in the department of public works and their assistants, all full-time appointed exempt management city employees, and other designated city officials and employees, including but not limited to those whose responsibilities involve the sale or lease of real estate, receipt of monies, purchasing of

supplies, issuing of permits or licenses, assessment of property, inspection of property, construction of public works, settlement of claims, preparation or awarding of contracts, retention of outside service, or performance of professional legal services for the city shall be required to file a statement of economic interests as provided for in s. 303-11.

3. It is the intent of the common council that the ethics board in its operations shall protect to the fullest extent possible the rights of individuals affected.

303-3. Definitions. In this chapter:

1. **ANYTHING OF VALUE** means any money or property, favor, service, payment, advance, forbearance, loan or promise of future employment, but does not include compensation and expenses paid by the city, fees and expenses which are permitted and reported to the board of ethics under s. 303-9, political contributions which are reported under ch. 11, Wis. Stats., or hospitality extended for a purpose unrelated to city business by a person other than an organization.

2. **ASSOCIATED**, when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

3. **BOARD** means the ethics board.

4. **GIFT** means the payment or receipt of anything of value without valuable consideration.

5. **IMMEDIATE FAMILY** means:

a. An individual's spouse; and

b. An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

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6. INCOME has the meaning given under section 61 of the federal internal revenue code.

7. INTERNAL REVENUE CODE has the meaning given under s. 71.01(6), Wis. Stats.

8. MINISTERIAL ACTION means an action that an individual performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to the exercise of the individual's own judgment as to the propriety of the action being taken.

9. OFFICIAL means any individual holding a position which is designated in the city positions ordinance as being required to file a statement of economic interests under s. 303-11.

10. ORGANIZATION means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

11. OTHER CITY EMPLOYE means any individual who is not an official; and who holds an office or position in the classified service of the city of Milwaukee, not including an office or position subject to the jurisdiction of the fire and police commission.

12. SECURITY means any stock; treasury stock; note; bond; debenture; evidence of indebtedness; share of beneficial interest in a business interest; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization subscription; transferable share; investment contract; commodity futures contract; voting trust certificate; certificate of deposit for a security; limited partnership interest; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as having the incidents of a security or offered in the manner in which securities are offered; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or option, warrant or right to subscribe to or purchase or sell, any of the foregoing.

b. SECURITY does not include a certificate of deposit in a bank, savings and loan association, savings bank, credit union or similar association organized under the laws of any state or the federal government.

303-5. Standards of Conduct. 1. The common council reaffirms that an official or other city employe holds his or her position as a public trust, and any effort to realize substantial personal gain through official conduct is a violation of that trust. This chapter does not prevent any official or other city employe from accepting other employment or following any pursuit which in no way interferes with the full and faithful discharge of his or her duties to this city. The common council further recognizes that officials and other city employes are drawn from society and, therefore, cannot and should not be without all personal and economic interest in the decisions and policies of government; that officials and other city employes retain their rights as citizens to interests of a personal or economic nature; that standards of ethical conduct for officials and other city employes need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts which are substantial and material and that officials and other city employes may need to engage in employment, professional or business activities, other than official duties, in order to support themselves or their families and to maintain a continuity of professional or business activity, or may need to maintain investments, which activities or investments do not conflict with the provisions of this chapter.

2. No official or other city employe may use his or her public position or office to obtain financial gain or anything of substantial value for the official's or other city employe's private benefit or that of his or her immediate family, or for an organization with which he or she is associated. This subsection does not prohibit an elected official from using the title or prestige of his or her office to obtain contributions permitted and reported under ch. 11, Wis. Stats.

3. No person may offer or give to an official or other city employe, directly or indirectly, and no official or other city employe may solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the official's vote, the official's or other city employe's official actions or judgment, or could reasonably be considered as a reward for any official action or inaction on the part of the official or other city employe. This subsection does not prohibit an official or other city employe from engaging in outside employment.

4. No official or other city employee may intentionally use or disclose information gained in the course of or by reason of his or her official position or activities in any way that could result in the receipt of anything of value for himself or herself, for his or her immediate family, or for any other person, if the information has not been communicated to the public or is not public information. This provision shall not be interpreted to prevent such official or other city employee from reporting violations of this chapter or other illegal acts to the proper authorities.

5. No official or other city employee may use or attempt to use his or her position to influence or gain unlawful benefits, advantages or privileges for himself or herself or others.

6. No official or other city employee, member of an official's or other city employee's immediate family, nor any organization with which the official or other city employee or a member of the official's or other city employee's immediate family owns or controls at least 10% of the outstanding equity, voting rights, or outstanding indebtedness may enter into any contract or lease involving a payment or payments of more than \$3,000 within a 12-month period, in whole or in part derived from city funds, unless the official or other city employee has first made written disclosure of the nature and extent of such relationship or interest to the board and to the department involved in regard to the contract or lease. Any contract or lease entered into in violation of this subsection may be voided by the city in an action commenced within 3 years of the date on which the ethics board, or the department or officer acting for the city in regard to the allocation of funds from which such payment is derived, knew or should have known that a violation of this subsection had occurred. This subsection does not affect the application of s. 946.13, Wis. Stats.

7.a. No official or other city employee may represent a person for compensation before a department or any employee thereof, except:

a-1. In a contested case which involves a party other than the city with interests adverse to those represented by the official or other city employee; or

a-2. At an open hearing at which a stenographic or other record is maintained; or

a-3. In a matter that involves only ministerial action by the department.

b. This subsection does not apply to representation by an official acting in his or her official capacity.

8. No former official or other city employee:

a. For 12 months following the date on which he or she ceases to be an official or employee, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a department with which he or she was associated as an official or employee, within 12 months prior to the date on which he or she ceased to be an official or employee.

b. May for compensation act on behalf of any party other than the city in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official or other city employee participated personally and substantially as an official or other city employee.

9. The city attorney may not engage in the private practice of law for compensation during the period in which he or she holds office.

10. This section does not prohibit an elected official from making inquiries for information on behalf of a person or organization or from representing a person or organization before a department if he or she receives no compensation therefor beyond the salary and other compensation or reimbursement to which the elected official is entitled by law.

303-7. Conflict of Interest Prohibited; Exception. 1. Except in accordance with the board's advice under sub. 2 and except as otherwise provided in sub. 3, no official or other city employee may:

a. Take any official action substantially affecting a matter in which the official or employee, a member of his or her immediate family, or an organization with which the official or employee is associated has a substantial financial interest.

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b. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official or employee, one or more members of the official's or employee's immediate family either separately or together, or an organization with which the official or employee is associated.

2.a. Any individual, and specifically including former officials and other city employees, either personally or on behalf of an organization or governmental body, may request of the board an advisory opinion regarding the propriety of any matter or matters to which the person is or may become a party; and any appointing officer, with the consent of a prospective appointee, may request of the board an advisory opinion regarding the propriety of any matter to which the prospective appointee is or may become a party. The board shall review a request for an advisory opinion and may advise the person making the request. Advisory opinions and requests therefor shall be in writing. The board's deliberations and actions upon requests shall be in meetings not open to the public. It is prima facie evidence of intent to comply with this chapter when a person refers a matter to the board and abides by the board's advisory opinion if the material facts are as stated in the opinion request. No member of the board may make public the identity of the individual requesting an advisory opinion or of individuals or organizations mentioned in the opinion.

b. Requests for confidential advisory opinions, records obtained or filed in connection with requests for confidential advisory opinions and confidential advisory opinions rendered shall be closed in whole to public inspection. This shall not be interpreted to preclude the board from compiling or publishing summaries of opinions rendered under par. a if no identification of the requestor or any organization identified in the opinion is made.

3. This section does not prohibit an official or other city employee from taking any action concerning the lawful payment of salaries or employee benefits or reimbursement of actual and necessary expenses, or prohibit an official from taking official action with respect to any proposal to modify law.

303-9. Honorariums, Fees and Expenses.

1. Every public official is encouraged to meet with clubs, conventions, special interest groups, political groups, school groups and other gatherings to discuss and to interpret legislative, administrative, executive or judicial processes and proposals and issues initiated by or affecting any city department or agency.

2.a. Except as provided in par. b, every official required to file who receives for a published work or for the presentation of a talk or participation in a meeting, any lodging, transportation, money or other thing with a combined pecuniary value exceeding \$50 excluding the value of food or beverage offered coincidentally with a talk or meeting shall, on his or her statement of economic interests, report the identity of every person from whom the official receives such lodging, transportation, money or other thing during his or her preceding taxable year, the circumstances under which it was received and the approximate value thereof.

b. An official need not report on his or her statement of economic interests under par. a information pertaining to any lodging, transportation, money or other thing of pecuniary value which:

b-1. The official returns to the payor within 30 days of receipt.

b-2. Is paid to the official by a person identified on the official's statement of economic interests under s. 303-13 as a source of income.

b-3. The official can show by clear and convincing evidence was unrelated to and did not arise from the recipient's holding or having held a public office and was made for a purpose unrelated to the purposes specified in sub. 1.

b-4. The official has previously reported to the board as a matter of public record.

b-5. Is paid by the city.

b-6. Is paid by a government body which the official represents in his or her official capacity.

3. Notwithstanding s. 303-5:

a. A public official may receive and retain reimbursement or payment of actual and reasonable expenses and an elected official may retain reasonable compensation, for a published work or for the presentation of a talk or participation in a meeting related to a topic

specified in sub. 1 if the payment or reimbursement is paid or arranged by the organizer of the event or the publisher of the work.

b. A public official may receive and retain anything of value if the activity or occasion for which it is given is unrelated to the official's use of the city's time, facilities, services or supplies not generally available to city residents and, the official can show by clear and convincing evidence that the payment or reimbursement was unrelated to and did not arise from the recipient's holding or having held a public office and was paid for a purpose unrelated to the purposes specified in sub. 1.

c. A public official may receive and retain from the city or on behalf of the city transportation, lodging, meals, food or beverage, or reimbursement therefore or payment or reimbursement of actual and reasonable costs that the official can show by clear and convincing evidence were incurred or received on behalf of the city and primarily for the benefit of the city and not primarily for the private benefit of the official or any other person.

d. A public official may receive and retain from a political committee under ch. 11, Wis. Stats., transportation, lodging, meals, food or beverage, or reimbursement therefor a payment or reimbursement of costs permitted and reported in accordance with ch. 11, Wis. Stats.

4. If a public official receives a payment not authorized by this chapter, in cash or otherwise, for a published work or a talk or meeting, the official may not retain it. If practicable, the official shall deposit it with the city treasurer. If that is not practicable, the official shall return it or its equivalent to the payor or convey it to a charitable organization other than the one with which he or she is associated.

303-11. Financial Disclosure. 1. REQUIRED. A statement of economic interests shall be filed with the board as follows:

a. Any individual who in January of any year is an official and is required to file as so designated by the city positions ordinance shall file with the board no later than February 28 of that year a statement of economic interests. The information on the statement shall be current as of December 31 of the preceding year.

b. Any newly appointed or employed individual required to file as so designated by the city positions ordinance shall file a statement of economic interests within 21 days following the date he or she assumes office if the individual has not previously filed a statement of economic interests with the board during that year. The information on the statement shall be current as per the date he or she assumes office.

c-1. Any nominee to a city board, commission or committee who is required to file as so designated by the city positions ordinance shall file a statement of economic interests within 21 days of being nominated unless the nominee has previously filed a statement with the board for that year. The information on the statement shall be current as of the date he or she is nominated. Following the receipt of a nominee's statement, the board shall forward copies of the statement to the members of the committee of the common council to which the nomination is referred. The statement of financial interests shall be submitted by the nominee in advance of the meeting of the common council committee considering the nomination for confirmation by the common council.

c-2. Any nominee to a city board, commission or committee not requiring common council confirmation but who is required to file as so designated by the city positions ordinance shall file a statement of economic interests within 21 days of being nominated unless the nominee has previously filed a statement with the board for that year. The information on the statement shall be current as of the date he or she is nominated.

d-1. Any candidate for city public office shall file a statement of economic interests with the city election commission no later than 4:30 p.m. on the 3rd day following the deadline for filing nomination papers for the office which the candidate seeks at the time of filing of nomination papers. The information on the statement shall be current as of December 31 of the year preceding the filing deadline. A copy shall also be filed at the same time with the ethics board.

d-2. If a candidate fails to file a statement of economic interests under this chapter within the required time, the candidate's name shall be omitted from the election ballot.

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2. FAILURE TO FILE. a. If an official who is required to file has failed to file a statement of economic interests under this chapter within the required time, no salary, compensation or reimbursement of expenses may be paid to the official until the official files the required statement. The board shall officially inform the city treasurer when it has determined that an official's salary, compensation and reimbursement expenses shall be withheld. All payments shall be withheld until the board notifies the city treasurer that the official has complied with this section.

b. The board upon notifying the city treasurer under par. a, shall also notify the appropriate appointing authority of the failure of an official to file a statement of economic interests.

3. EXTENSION OF DEADLINE. On its own motion or at the request of any individual who is required to file a statement of economic interests, the board may extend the time for filing or waive any filing requirement if the board determines that the literal application of the filing requirements of this section would work an unreasonable hardship on that individual or that the extension of the time for filing or waiver is in the public interest. The board shall set forth in writing as a matter of public record its reason for the extension or waiver. Extensions and waivers shall not be granted to candidates for public office.

303-13. Form of Statement. Every statement of economic interests which is required to be filed under this chapter shall be in the form prescribed by the board. Information which is required shall be provided on the basis of the best knowledge, information and belief of the official filing the statement. The statement shall contain the following information:

1. The identity of every organization with which the individual required to file is associated and the nature of his or her association with the organization, except that no identification need be made of:

a. Any organization which is described in section 170-c of the internal revenue code.

b. Any organization which is organized and operated primarily to influence voting at an election including support for or opposition to an individual's present or future candidacy or to a present or future referendum.

c. A trust.

c-1. An individual is the owner of a trust and the trust's assets and obligations if he or she is the creator of the trust and has the power to revoke the trust without obtaining the consent of all of the beneficiaries of the trust.

c-2. An individual who is eligible to receive income or other beneficial use of the principal of a trust is the owner of a proportional share of the principal in the proportion that the individual's beneficial interest in the trust bears to the total beneficial interests vested in all beneficiaries of the trust. A vested beneficial interest in a trust includes a vested reverter interest.

2. The identity of every organization or body politic in which the individual who is required to file or that individual's immediate family, severally or in the aggregate, owns, directly or indirectly, securities having a value of \$5,000 or more, the identity of such securities and their approximate value, except that no identification need be made of a security or issuer of a security when it is issued by any organization not doing business in Wisconsin or by any government or instrumentality or agency thereof, or an authority or public corporation created and regulated by an act of such government, other than the state of Wisconsin, its instrumentalities, agencies and political subdivisions, or authorities or public corporations created and regulated by an act of the Wisconsin legislature.

3. The name of any creditor to whom the individual who is required to file or such individual's immediate family, severally or in the aggregate, owes \$5,000 or more and the approximate amount owed.

4. The real property located in the counties of Milwaukee, Ozaukee, Racine, Washington and Waukesha in which the individual who is required to file or such individual's immediate family holds an interest, other than the principal residence of the individual or his or her immediate family, and the nature of the interest held. An individual's interest in real property does not include a proportional share of interests in real property if the individual's proportional share is less than 10% of the outstanding shares or is less than an equity value of \$5,000.

5. The identity of each payer from which the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged, then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization. In addition, no identification need be made of payers from which only dividends or interest, anything of pecuniary value reported under s. 303-9 or political contributions reported under ch. 11, Wis. Stats., were received.

6. If the individual who is required to file or a member of his or her immediate family received \$1,000 or more of his or her income for the preceding taxable year from a partnership, limited liability company, corporation electing to be taxed as a partnership under subchapter S of the internal revenue code, corporation taxed under subchapter C of the internal revenue code or service corporation under ss. 180.1901 to 180.1921, Wis. Stats., in which the individual or a member of his or her immediate family, severally or in the aggregate, has a 10% or greater interest, the identity of each payer from which the organization received \$1,000 or more of its income for its preceding taxable year, except that if the individual who is required to file identifies the general nature of the business in which he or she or his or her immediate family is engaged then no identification need be made of a decedent's estate or an individual, not acting as a representative of an organization, unless the individual is a lobbyist as defined in s. 13.62, Wis. Stats. In addition, no identification need be made of payers from which dividends or interest are received.

7. The identity of each person from which the individual who is required to file received, directly or indirectly, any gift or gifts having an aggregate value of more than \$50 within the taxable year preceding the time of filing, except that the source of a gift need not be identified if the donor is the donee's parent, grandparent, child, grandchild, brother, sister, parent-in-law, grandparent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, niece, nephew, spouse, fiancé or fiancée.

8. Lodging, transportation, money or other things of pecuniary value reportable under s. 303-9.

9. With respect to dollar amounts required to be reported pursuant to subs. 2 and 3, it is sufficient to report whether the amount is not more than \$50,000, or more than \$50,000.

303-15. Organization, Composition and Operation of the Board of Ethics.

1. There is created an ethics board of 7 members who are residents of the city and shall serve without compensation unless the common council otherwise provides. Members of the board of ethics shall not be elected officials, persons appointed to elective office, full-time appointed officials whether exempt or nonexempt, or city employees, nor shall they be currently serving on any other city board or commission. Board members shall be selected in the following manner and shall be submitted by the mayor to the common council for confirmation. The mayor shall request one nominee for the board from each of the following organizations: the Metropolitan Milwaukee Association of Commerce, Milwaukee County Labor Council, Interfaith Council of Milwaukee, League of Women Voters of Milwaukee County, Milwaukee branch-National Association for the Advancement of Colored People, Public Policy Forum and the Milwaukee Bar Association. Terms of office shall be 3 years. The members of the board shall select their own chairperson.

2. The board may employ its own staff who shall maintain residency within the city of Milwaukee. The city attorney shall furnish the board whatever legal assistance is necessary to carry out its functions and the city clerk shall furnish the board with whatever assistance it requires.

3. All members of the board shall file statements of economic interests with the board.

4. Any action by the board, except an action relating to procedure of the board, requires the affirmative vote of 4 of its members.

5. No later than February 15 of each year, the board shall submit a report to the mayor concerning its actions in the preceding year. The report shall contain a summary of its determinations and advisory opinions. The board shall make sufficient alterations in the

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summaries to prevent disclosing the identities of individuals or organizations involved in the decisions or opinions. The board shall make such further reports on matters within its jurisdiction and recommendations for further legislation as it deems desirable.

303-17. Duties of the Board. The board shall:

1. Adopt written rules, which shall be submitted to the common council for approval, as may be necessary to carry out this chapter. A copy of the rules shall be filed with the city clerk. The board shall give prompt notice of the contents of its rules to officials who will be affected thereby.
2. Prescribe and make available forms for use under this chapter.
3. Retain outside counsel and other experts as needed after solicitation of recommendations from the city attorney and upon such contract for services approved for form and content by the city attorney.
4. Act as legal custodian and accept and file any information related to the purposes of this chapter which is voluntarily supplied by any person in addition to the information required by this chapter.
5. Preserve the statements of economic interests filed with it pursuant to applicable statutory and city code provisions.
6. Make statements of economic interests filed with the board available for public inspection and copying during office hours and make copying facilities available at a charge not to exceed actual cost.
7. Compile and maintain an index to all statements of economic interests currently on file with the board to facilitate public access to such statements of economic interests.
8. Prepare and publish special reports and technical studies to further the purposes of this chapter.

303-19. Complaints. 1. The board shall accept from any individual, either personally or on behalf of an organization or governmental body, a verified complaint in writing which states the name of any person alleged to have committed a violation of this chapter and which sets forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint and a general statement of the

applicable provisions with respect to such verified complaint. If the board determines that the verified complaint does not allege facts sufficient to constitute a violation of this chapter, it shall dismiss the complaint and notify the complainant and the accused. If the board determines that the verified complaint alleges facts sufficient to constitute a violation of this chapter, it may make an investigation

with respect to any alleged violation. If the board determines that the verified complaint was brought for harassment purposes, the board shall so state.

2. Following the receipt of a verified complaint or upon the receipt of other information, whether or not under oath, that provides a reasonable basis for the belief that a violation of this chapter has been committed or that an investigation of a possible violation is warranted, the board may investigate the circumstances concerning the possible violation. Prior to invoking any power under s. 303-21, the board shall authorize an investigation by a motion of the board which shall state the nature and purpose of the investigation and the actions or activities to be investigated. Upon adoption of a motion, the board shall notify each person who is the subject of the investigation pursuant to sub. 3. If the board, during the course of an investigation, finds probable cause to believe that a violation of this chapter has occurred, it may:

a. If no verified complaint has been filed, make upon its own motion a verified complaint, which shall be in writing, shall state the name of the person who is alleged to have committed a violation of this chapter and shall set forth the particulars thereof. The board shall forward to the accused within 10 days a copy of the complaint, a general statement of the applicable provisions with respect to such verified complaint and a specific statement enumerating the source or sources of information upon which the complaint is based.

b. If a verified complaint has been filed and the board finds probable cause to believe that a violation of this chapter, other than one contained in the complaint, has occurred, it may amend the complaint, upon its own motion, to include such violations. If the complaint is so amended by the board, a copy of the amendment shall be sent to the person complained against within 48 hours.

3. Upon adoption of a motion authorizing an investigation under sub. 2, the board shall mail a copy of the motion to each alleged violator who is identified in the motion together with a notice informing the alleged violator that the person is the subject of the investigation authorized by the motion and a general statement of the applicable provisions with respect to such investigation. Service of the notice is complete upon mailing. 4 .

No action may be taken on any complaint which is filed later than 3 years after a violation of this chapter is alleged to have occurred.

303-21. Investigations. Pursuant to any investigation or hearing conducted under this chapter, the board has the power:

1. To require any person to submit in writing such reports and answers to questions relevant to the proceedings conducted under this chapter as the board may prescribe, such submission to be made within such period and under oath or otherwise as the board may determine.

2. To administer oaths and to require by subpoena issued by it the attendance and testimony of witnesses and the production of any documentary evidence relating to the investigation or hearing being conducted. Issuance of a subpoena requires action by the board in accordance with s. 303-15-4.

3. To order testimony to be taken by deposition before any individual who is designated by the board and has the power to administer oaths, and, in such instances, to compel testimony and the production of evidence in the same manner as authorized by sub. 2.

4. To pay witnesses the same fees and mileage as are paid in like circumstances by the courts of this state.

5. To request and obtain from the department of revenue copies of state income tax returns and access to other appropriate information under s. 71.78(4), Wis. Stats., regarding all persons who are the subject of such investigation.

6. To retain outside counsel and other experts as needed after solicitation of recommendations from the city attorney and upon such contract for services approved for form and content by the city attorney.

303-23. Probable Cause of Violation. 1. At the conclusion of its investigation, the board shall, in preliminary written findings of fact and conclusions based thereon, make a determination of whether or not probable cause exists to believe that a violation of this chapter has occurred. If the board determines that no probable cause exists, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that there is probable cause for believing that a violation of this chapter has been committed, its preliminary findings of fact and conclusions may contain:

a. A referral to the district attorney's office recommending further investigation and possible prosecution.

b. An order setting a date for hearing to determine whether a violation of this chapter has occurred. The board shall serve the order upon the accused. A hearing ordered under this subsection shall be commenced within 30 days after the date it is ordered unless the accused petitions for and the board consents to a later date. Prior to any hearing ordered under this subsection, the accused is entitled to full discovery rights, including adverse examination of witnesses who will testify at the hearing at a reasonable time before the date of the hearing.

2. The board shall inform the accused or his or her counsel of exculpatory evidence in its possession.

303-25. Hearing Procedure. 1. During any investigation and during any hearing which is conducted to determine whether a violation of this chapter has occurred, the person under investigation or the accused may be represented by counsel of his or her own choosing, and the accused or his or her representative, if any, shall have an opportunity to challenge the sufficiency of any complaint which has been filed against him or her, to examine all documents and records obtained or prepared by the board in connection with the matter heard, to bring witnesses, to establish all pertinent facts and circumstances, to question or refute testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses, and shall otherwise be able to exercise fully any pretrial discovery procedure usually available in civil actions.

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During any hearing conducted by the board to determine whether a violation of this chapter has occurred, all evidence including certified copies of records which the board considers shall be fully offered and made a part of the record in the proceedings. The accused or any other person under investigation shall be afforded adequate opportunity to rebut or offer countervailing evidence. Upon request of the accused, the board shall issue subpoenas to compel the attendance of necessary witnesses.

2. The board shall appoint a hearing examiner to conduct hearings under this section. The board may also retain outside counsel and other experts as needed with respect to hearings in accordance with its policies. The selection of a hearing examiner and outside counsel or other experts and any contract for such persons shall be made after solicitation of recommendations from the city attorney and the contract shall be approved for form and content by the city attorney. Any person whose name is mentioned or who is otherwise identified during a hearing being conducted by the board and who, in the opinion of the board, may be adversely affected thereby, may, upon request of the person or a representative of the person, or upon the request of any member of the board, appear at the hearing to testify on his or her own behalf or have a representative appear to so testify, and the board may permit any other person to appear and to testify at a hearing.

3. Chapters 901 to 911, Wis. Stats., apply to the admission of evidence at the hearing. The board shall not find a violation of this chapter except upon clear and convincing evidence admitted at the hearing.

4. After the conclusion of the hearing the board shall as soon as practicable begin deliberations on the evidence presented at such hearing and shall then proceed to determine whether the accused has violated this chapter.

303-27. Determinations; Board Actions. If the board determines that no violation of this chapter has occurred, it shall immediately send written notice of such determination to the accused and to the party who made the complaint. If the board determines that a violation of this chapter has occurred, its findings of fact and conclusions may contain one or more of the following orders or recommendations:

1. In the case of a city official, a recommendation that the city official be censured, suspended or removed from office or employment. The recommendation shall be made to the appropriate appointing authority who may censure, suspend or take action to remove the official from office or employment.

2. In the case of a city employee, a recommendation that the city employee be disciplined or discharged. The recommendation shall be made to the appropriate appointing authority.

3. An order requiring the accused to conform his or her conduct to this chapter.

303-28. Settlements.

1. The board may compromise and settle any action or potential action for a violation of this chapter which the board is authorized to take under s. 303-27. An action may be settled for such sum or terms as may be agreed upon between the board and the alleged violator.

2. Whenever the board enters into a settlement agreement with an individual who is accused of a violation of this chapter or who is investigated by the board for a possible violation of this chapter, the board shall reduce the agreement to writing, together with a statement of the board's findings and reasons for entering into the agreement and shall retain the agreement and statement in its office for inspection under s. 303-33-1.

303-29. Action by the Common Council.

1. COMPLAINT FILED. If findings relative to an elected or appointed official are filed by the board of ethics with the common council, the matter shall be referred to the appropriate standing committee of the common council for a report, or the common council may appoint a special committee and proceed in accordance with the provisions of s. 4-28, city charter.

2. RECOMMENDATIONS. The committee, in reporting the matter to the common council, may recommend a dismissal of the charges, a reprimand, or a hearing before the common council to determine whether removal from office is warranted under s. 4-28, city charter. Failure of an official to file the statement of economic interests required in s. 303-11 may constitute grounds for removal from office.

3. HEARING. Any hearing by the common council or by a special or standing committee as designated by the council, shall be conducted in accordance with the following provisions:

a. The official must be given at least 20 days notice of the hearing date.

b. The rules of evidence shall apply to the hearing. All evidence, including certified copies of records and documents which the council considers shall be fully offered and made part of the record in the case. Each party shall be afforded adequate opportunity to rebut or offer countervailing evidence.

c. During the entire hearing conducted under the provisions of this chapter, the official or any person whose activities are under investigation shall be entitled to be represented by counsel of his or her choosing. The common council shall immediately disclose and forward to the official or his or her counsel any evidence which it possesses that may tend to clear the official.

d. The official or his or her representative shall have an adequate opportunity to examine all documents and records to be used at the hearing at a reasonable time before the date of the hearing as well as during the hearing, to bring witnesses to establish all pertinent facts and circumstances, and to question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses. Upon the request of the officer involved, the council shall subpoena named individuals to appear as witnesses at the hearing, if such action is necessary to compel their attendance.

e. The council shall have the power to compel the attendance of witnesses and to issue subpoenas for books, records, documents or papers therein to be designated under the authority granted to it by s. 885.01(3), Wis. Stats.

f. The council may request the Wisconsin department of revenue for permission to have a designated public officer examine the income tax returns of the official whose conduct or activities are under consideration by the council. The examination of the official's income tax returns shall be in accordance with s. 71.78(4), Wis. Stats.

4. COUNCIL ACTION. The common council shall make a determination in regard to the recommendation of the committee.

Dismissal of the findings by the board of ethics as referred to council, or reprimand by the council shall be by a majority vote. Removal from office is governed by the laws of the state of Wisconsin and failure of an official to file the statement of economic interests required in s. 303-11 may constitute grounds for removal from office. The hearing conducted by the common council shall be in accordance with the provisions of s. 17.12, Wis. Stats., and s. 4-28 of the city charter, as well as with the requirements of due process and such provisions of this chapter as may be applicable.

303-31. Reimbursement of Legal Expenses.

City funds shall be used to reimburse individuals for reasonable legal expenses incurred in their successful defense of charges filed against them with the board or of charges filed with the common council by the board.

303-33. Public Inspection of Records.

1. Except as provided in sub. 2, all records in the possession of the board are open to public inspection at all reasonable times.

2. Notwithstanding sub. 1, the following records in the board's possession are not open for public inspection:

a. Records obtained in connection with a request for an advisory opinion other than summaries of advisory opinions that do not disclose the identity of individuals requesting such opinions or organizations on whose behalf they are requested. The board may, however, make such records public with the consent of the individual requesting the advisory opinion or the organization or governmental body on whose behalf it is requested. A person who makes or purports to make public the substance of or any portion of an advisory opinion requested by or on behalf of the person is deemed to have waived the confidentiality of the request for an advisory opinion and of any records obtained or prepared by the board in connection with the request for an advisory opinion.

b. Records obtained or prepared by the board in connection with an investigation, except that the board shall permit inspection of records that are made public in the course of a

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hearing by the board to determine if a violation of this chapter has occurred. Whenever the board refers such investigation and hearing records to the appropriate party under s. 303-27, they may be made public in the course of prosecution initiated under this chapter.

303-35. Penalty. In addition to any other action, any person violating this chapter shall be subject to a forfeiture of not less than \$100 nor more than \$1,000 for each violation. All forfeitures shall be paid to the city treasurer. The city attorney, when so requested by the board, shall institute proceedings to recover any forfeiture incurred under this section in circuit court which is not paid by the person against whom it is assessed.

**LEGISLATIVE HISTORY
CHAPTER 303**

Abbreviations:

am = amended
cr = created

ra = renumbered and amended
rc = repealed and recreated

rn = renumbered
rp = repealed

| <u>Section</u> | <u>Action</u> | <u>File</u> | <u>Passed</u> | <u>Effective</u> |
|----------------|------------------|-------------|---------------|------------------|
| Ch. 303 | cr | 881930 | 3/7/89 | 3/25/89 |
| Ch. 303 | rc | 900568 | 4/23/91 | 4/27/91 |
| 303-1-0 | rp | 890489 | 7/25/89 | 8/15/89 |
| 303-1-1 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-1-1 to 11 | rn | 890489 | 7/25/89 | 8/15/89 |
| 303-1-12 | rp | 890489 | 7/25/89 | 8/15/89 |
| 303-1-13 | rn | 890489 | 7/25/89 | 8/15/89 |
| 303-3-1 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-3-2 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-3-7 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-3-11 | rn to 303-3-12 | 930505 | 7/27/93 | 8/13/93 |
| 303-3-11 | cr | 930505 | 7/27/93 | 8/13/93 |
| 303-3-12-b | am | 930505 | 7/27/93 | 8/13/93 |
| 303-4-1-y | am | 882618 | 9/1/89 | 9/19/89 |
| 303-5-1 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-2 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-2 | am | 010941 | 3/5/2002 | 3/25/2002 |
| 303-5-3 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-4 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-5 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-6 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-6 | am | 010941 | 3/5/2002 | 3/25/2002 |
| 303-5-7-a-0 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-7-a-1 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-8 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-5-8-a | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-5-11 | rp | 930505 | 7/27/93 | 8/13/93 |
| 303-7-1 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-7-2-a | am | 930505 | 7/27/93 | 8/13/93 |
| 303-7-3 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-9-2-a | am | 010941 | 3/5/2002 | 3/25/2002 |
| 303-11-1-a | am | 921303 | 12/18/92 | 1/12/93 |
| 303-11-1-a | am | 930505 | 7/27/93 | 8/13/93 |
| 303-11-1-c | am | 921859 | 6/2/99 | 6/19/99 |
| 303-11-2 | am | 930505 | 7/27/93 | 8/13/93 |
| 303-11-3 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-13-1-c | rp | 041443 | 3/16/2005 | 4/2/2005 |
| 303-13-1-d | rn to 303-13-1-c | 041443 | 3/16/2005 | 4/2/2005 |
| 303-13-3 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-13-4 | am | 041443 | 3/16/2005 | 4/2/2005 |
| 303-13-6 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-13-6 | am | 041443 | 3/16/2005 | 4/2/2005 |
| 303-15-2 | am | 951001 | 11/6/95 | 11/14/95 |
| 303-23-1 | rc | 010941 | 3/5/2002 | 3/22/2002 |
| 303-25-2 | am | 010941 | 3/5/2002 | 3/22/2002 |
| 303-27 | rc | 010941 | 3/5/2002 | 3/22/2002 |
| 303-28 | cr | 010941 | 3/5/2002 | 3/22/2002 |
| 303-35 | am | 010941 | 3/5/2002 | 3/22/2002 |

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